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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,103	02/11/2004	Ryo Kawahara	2023-0104002Reg	2619
22850	7590	08/08/2006	EXAMINER	
C. IRVIN MCCLELLAND OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			DIACOU, ARI M	
			ART UNIT	PAPER NUMBER
			3663	

DATE MAILED: 08/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/775,103		KAWAHARA ET AL.	
	Examiner		Art Unit	
	Ari M. Diacou		3663	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4 and 33-38 is/are pending in the application.
- 4a) Of the above claim(s) 35-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4,33 and 34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>7-27-2006</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7-27-2006 has been entered.

Information Disclosure Statement

2. The listing of references in the Search Report is not considered to be an information disclosure statement (IDS) complying with 37 CFR 1.98. 37 CFR 1.98(a)(2) requires a legible copy of: (1) **each foreign patent**; (2) each publication or that portion which caused it to be listed; (3) for each cited pending U.S. application, the application specification including claims, and any drawing of the application, or that portion of the application which caused it to be listed including any claims directed to that portion, unless the cited pending U.S. application is stored in the Image File Wrapper (IFW) system; and (4) all other information, or that portion which caused it to be listed. In addition, each IDS must include a list of all patents, publications, applications, or other information submitted for consideration by the Office (see 37 CFR 1.98(a)(1) and (b)), and MPEP § 609.04(a), subsection I. states, "the list ... must be submitted on a

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separate paper." Therefore, the references **struck through** in the Search Report have not been considered. Applicant is advised that the date of submission of any item of information or any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the IDS, including all "statement" requirements of 37 CFR 1.97(e). See MPEP § 609.05(a).

Election/Restrictions

3. Claims 35-38 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention III, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 8-9-2005.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1, 4 and 33-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ye (USP No. 6414788) in view of Chan (USP No. 2004/0051938). Ye discloses the claim limitations in the claims revised on 7-27-2006, beginning with the words:

- Detecting...[Col. 6, lines 3-6]
- Obtaining... [Parameter E, Col. 6 lines 46-54]
- Applying...[Equation 3, Col. 6, line 57]

- Controlling...[Fig. 12, #84]

but fails to disclose:

- Adjusting a control parameter of the proportional calculator in response to the detected optical input power.

Chan teaches that the parameters in the PID calculation should be changed in response to changes in the input power applied to the amplifier. [¶0064-0065]. Therefore, it would have been obvious to one skilled in the art (e.g. an optical engineer) at the time the invention was made, to make the adjustments suggested by Chan to the method of Ye, for the advantage of finer control over gain transients.

6. Claims 1, 4 and 33-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ye (USP No. 6414788) in view of Gerish (USP No. 2002/0093729). Ye discloses the claim limitations in the claims revised on 7-27-2006, beginning with the words:

- Detecting...[Col. 6, lines 3-6]
- Obtaining... [Parameter E, Col. 6 lines 46-54]
- Applying...[Equation 3, Col. 6, line 57]
- Controlling...[Fig. 12, #84]

but fails to disclose:

- Adjusting a control parameter of the proportional calculator in response to the detected optical input power.

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Gerish teaches that the parameters in the PID calculation should be changed in response to the amplifier aging with time ("control parameters tuning") [¶0042] [¶0052]. Therefore, it would have been obvious to one skilled in the art (e.g. an optical engineer) at the time the invention was made, to make the adjustments suggested by Gerish to the method of Ye, for the advantage of finer control over gain transients.

7. Regarding claim 33, the "means for" links claim 33 to the method claimed in claim 1, the rejections of the claims are substantially parallel. The adjusting means in Chan is control unit 27. The adjusting means in Gerish is controller 120.

8. Regarding claims 4 and 34, Ye, Chan, and Gerish disclose PID controllers for dealing with transients including add/drop situations.

Conclusion

9. While patent drawings are not drawn to scale, relationships clearly shown in the drawings of a reference patent cannot be disregarded in determining the patentability of claims. See In re Mraz, 59 CCPA 866, 455 F.2d 1069, 173 USPQ 25 (1972).

10. The references made herein are done so for the convenience of the applicant. They are in no way intended to be limiting. The prior art should be considered in its entirety.

11. The prior art which is cited but not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ari M. Diacou whose telephone number is (571) 272-5591. The examiner can normally be reached on Monday - Friday, 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Keith can be reached on (571) 272-6878. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AMD 8/4/2006


JACK KEITH
SUPERVISORY PATENT EXAMINER